

## Rural Utilities Service, USDA

## § 1744.21

### Subpart E—Borrower Investments

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AUTHORITY: 7 U.S.C. 901 *et seq.*; 7 U.S.C. 1921 *et seq.*; Pub. L. 103-354, 108 Stat. 3178 (7 U.S.C. 6941 *et seq.*).

### Subpart A [Reserved]

### Subpart B—Lien Accommodations and Subordination Policy

SOURCE: 51 FR 32430, Sept. 12, 1986, unless otherwise noted. Redesignated at 55 FR 39396, Sept. 27, 1990.

#### § 1744.20 General.

Recent changes in the telephone industry, including deregulation and technological developments, have caused RUS borrowers and other organizations providing telephone services to consider undertaking projects to provide new telecommunication services. Although certain telecommunication services may not be eligible for financing under the RE Act, these services may nevertheless advance Act objectives where the borrower obtains financing from private lenders. The borrower's financial strength and the assurance of repayment of outstanding Government debt may be improved as a result of providing new telecommunication services. To facilitate the financing of new telecommunication services, RUS is willing to consider accommodating the Government's lien on telephone borrowers' systems or subordinating the Government's lien on after-acquired property of telephone borrowers. This part sets forth RUS

policy with respect to such lien accommodations and subordinations. The policies of this part will also be utilized by the Governor of the Rural Telephone Bank in carrying out the Rural Telephone Bank's loan program.

#### § 1744.21 Definitions.

*Accommodation* means sharing the Government's lien on a *pari passu* or pro rata basis with a private lender.

*Act* means the Rural Electrification Act of 1936, as amended (7 U.S.C. 901 *et seq.*)

*Administrator* means the Administrator of RUS. See 7 CFR part 1735.

*Advance* means transferring funds from RUS or FFB to the borrower's construction fund.

*After-acquired property* means property which is to be acquired by the borrower and which would be subject to the lien of the Government's mortgage when acquired.

*Borrower* means any organization that has an outstanding loan made or guaranteed by RUS, or that is seeking such financing. See 7 CFR part 1735.

*Construction Fund* means the RUS Construction Fund Account required by section 2.4 of the Loan Contract into which all RUS loan funds are advanced.

*Disbursement* means the paying of money by the borrower out of the construction fund for approved loan purposes.

*FFB* means the Federal Financing Bank.

*FRS* means RUS Form 481 (OMB-No. 0572-0023) Financial Requirement Statement.

*Hardship loan* means a loan made by RUS under section 305(d)(1) of the RE Act bearing interest at a rate of 5 percent per year.

*Interim Construction* means the purchase of equipment or the conduct of construction under an RUS-approved plan of interim financing. See 7 CFR part 1737.

*Interim Financing* means funding for a project which RUS has acknowledged will be included in a loan, should said loan be approved, but for which RUS loan funds have not yet been made available.

## §§ 1744.22–1744.29

*Loan (RUS Loan)* means any loan made or guaranteed by RUS. See 7 CFR part 1735.

*Loan Documents* means the loan contract, note and mortgage between the borrower and RUS and any associated document pertinent to a loan.

*Loan Funds (RUS Loan Funds)* means funds provided by RUS through direct or guaranteed loans.

*Private lender* means any lender other than the Rural Utilities Service, the Rural Telephone Bank or the Federal Financing Bank.

*RUS cost-of-money loan* means a loan made under section 305(d)(2) of the RE Act bearing an interest rate as determined under 7 CFR 1735.31(c). RUS cost-of-money loans are made concurrently with RTB loans.

*RTB* means the Rural Telephone Bank.

*Subordination* means granting a lien which a private lender has on specific property priority over the Government's lien on such property.

*Telecommunication services* means any service for the transmission, emission, or reception of signals, sounds, images, or intelligence of any nature by optical waveguide, wire, radio, or other electromagnetic systems and shall include all facilities used in providing such service as well as the development, manufacture, sale, and distribution of such facilities.

[51 FR 32430, Sept. 12, 1986. Redesignated at 55 FR 39396, Sept. 27, 1990. Further redesignated and amended at 59 FR 43716, Aug. 25, 1994]

## §§ 1744.22–1744.29 [Reserved]

### § 1744.30 Act purposes.

(a) Borrowers are encouraged to submit requests for accommodation of the Government's lien on the borrower's system in order to facilitate obtaining financing from private lenders for purposes provided in the RE Act.

(b) The Administrator will consider requests for the subordination of the Government's lien on after-acquired property which will enable borrowers to obtain financing from private lenders for purposes provided in the Act: Provided, however, that property integral to the operation of projects financed with loans made or guaranteed

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by RUS shall be financed with funds obtained through lien accommodations instead of lien subordinations, unless the Administrator determines that it is in the Government's interest to do otherwise.

## §§ 1744.31–1744.39 [Reserved]

### § 1744.40 Non-Act purposes.

(a) The Administrator will consider requests for the accommodation of the Government's lien on the borrower's system or the subordination of the Government's lien on after-acquired property which will enable the borrowers to obtain financing from private lenders for the purpose of providing new telecommunication services which may not be eligible for financing under the Act if the Administrator is satisfied that:

(1) The borrower will have the ability to repay its existing and proposed indebtedness;

(2) The security for outstanding Government loans and guarantees is reasonably adequate and will not be adversely affected by the accommodation or subordination; and

(3) Approval of the request is in the interests of the Government. Generally, it would not be in the Government's interest if the accommodation or subordination is being requested to enable the borrower to avoid complying with such RUS policies or procedures, as competitive bid procedures or purchasing equipment acceptable to RUS, under 7 CFR part 1753.

(b) In determining that the security for outstanding Government loans and guarantees is reasonably adequate and will not be adversely affected by the accommodation or subordination the Administrator will consider, among other matters, when applicable, the following:

(1) Market forecasts for the project;

(2) Projected revenues, expenses and net income of the borrower's existing system and the project;

(3) Maximum debt service on indebtedness of both the borrower's system and the project;

(4) Projected rate of return on the borrower's investment in the project;